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 American AgCredit, PCA

UNITED STATES BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 (FRESNO DIVISION)

In re  
 LJB FARMS, LLC,  
 Debtor.

Case No. 2017-12998

Chapter 12

Doc. No. TGM-1

**MEMORANDUM IN SUPPORT OF  
 MOTION OF AMERICAN AGCREDIT,  
 PCA FOR RELIEF FROM THE  
 AUTOMATIC STAY AS TO ALL REAL  
 PROPERTY AND PERSONAL  
 PROPERTY COLLATERAL**

Date: January 4, 2019

Time: 9:30 a.m.

Place: 2500 Tulare Street

Dept. B, Courtroom 13, Fifth Floor  
 Fresno, California

Judge: Honorable René Lastreto II

American AgCredit, PCA, ("American") submits this memorandum in support of its motion for relief from the automatic stay.

**I. INTRODUCTION.**

By the pending motion, American seeks relief from the automatic stay, as to itself and its agents, designees, assignees, employees, attorneys, representatives and/or independent contractors against Debtor and Debtor In Possession LBJ Farms, LLC ("Borrower" or "Debtor") and the

Chapter 12 Trustee Michael Meyer and the bankruptcy estate and all collateral, both real property and personal property, of American including the personal property of Debtor including, without limitation, all livestock, machinery, equipment, farm equipment, tools and fixtures, all goods, crops, harvested crops, farm products, inventory, parts, supplies, deposit accounts, capital stock issued under the Farm Credit Act of 1971, as amended, all rights to payment, payment of money or payment in kind, accounts, contract rights, patronage dividends, chattel paper, documents, instruments, general intangibles, warehouse receipts, and rights under any government or other loan or price support, general intangibles, all rights in and claims to any insurance policy, all rights to any statutory or common law lien or trust, all books, records, computer data and information related to the collateral and all proceeds and products of the thereof and all renewals, replacements, substitutions, additions, accessions, rents, issues, royalties and profits and the other personal property more fully described in the Security Agreement, the real properties of Debtor located in Madera and Merced Counties of the State of California and the stock of Debtor in American in the amount of \$1,000 for: (1) the commencement, prosecution and completion of judicial and/or nonjudicial foreclosure proceedings pursuant to the applicable law which may include the appointment of a receiver, pursuant to applicable nonbankruptcy law and/or the applicable Loan Documents, and to obtain possession thereof following the sale in accordance with applicable nonbankruptcy law; (2) the exercise of rights and/or remedies under the applicable Loan Documents and/or the applicable law, including state law; and (3) for such other relief that the Court determines is just and proper.

American is informed and believes and on that basis alleges that the legal descriptions of the real properties are more fully described in the Deeds of Trust attached as Exhibits F and G to the Declaration of Scott Clifton ("Clifton Dec."). As part of the motion for relief, American also requests a waiver of the fourteen (14) day stay period provided by the Federal Rules of Bankruptcy Procedure. This motion is brought pursuant to Local Rules 4001-1 and 9014-1 of the Local Rules, the Federal Rules of Bankruptcy Procedure and the Bankruptcy Code.

## **II. SUMMARY OF LOAN AND BREACH OF PLAN**

The loan ("Loan") of American, the subject of this motion, may be summarized as follows:

1 On or about June 18, 2013, Borrower executed the Master Loan And Membership  
2 Agreement, Clifton Dec., Exhibit A.

3 On or about August 12, 2013, Borrower executed a Security Agreement in favor of  
4 American. Clifton Dec., Exhibit B. The Security Agreement granted American a first priority lien  
5 and security interest in the personal property of Borrower including, without limitation, all livestock,  
6 machinery, equipment, farm equipment, tools and fixtures, all goods, crops, harvested crops, farm  
7 products, inventory, parts, supplies, deposit accounts, capital stock issued under the Farm Credit Act  
8 of 1971, as amended, all rights to payment, payment of money or payment in kind, accounts,  
9 contract rights, patronage dividends, chattel paper, documents, instruments, general intangibles,  
10 warehouse receipts, and rights under any government or other loan or price support, general  
11 intangibles, all rights in and claims to any insurance policy, all rights to any statutory or common  
12 law lien or trust, all books, records, computer data and information related to the collateral and all  
13 proceeds and products of the thereof and all renewals, replacements, substitutions, additions,  
14 accessions, rents, issues, royalties and profits and the other personal property more fully described in  
15 the Security Agreement (collectively "the Personal Property").

16 On or about March 7, 2016, Borrower executed a Credit Agreement to evidence a loan in the  
17 original principal amount of \$325,000. Clifton Dec., Exhibit C.

18 On or about February 9, 2017, Borrower executed the Restructure Agreement, the  
19 Amendment to Credit Agreement, the Deed of Trust, Security Agreement, Assignment of Rents and  
20 Fixture Filing recorded in Madera County, and the Deed of Trust, Security Agreement, Assignment  
21 of Rents and Fixture Filing recorded in Merced County. Clifton Dec., Exhibits D-G. The real  
22 property and personal property more fully described in the Deed of Trust, Security Agreement,  
23 Assignment of Rents and Fixture Filing recorded in Madera County, Exhibit F, to the Clifton  
24 Declaration is referred to herein as the "Madera Property", and the real property and personal  
25 property more fully described in the Deed of Trust, Security Agreement, Assignment of Rents and  
26 Fixture Filing recorded in Merced County, Exhibit G to the Clifton Declaration is referred to herein  
27 as the "Merced Property". The Madera Property and Merced Property are collectively referred to as  
28 the "Real Properties". The loan is also secured by Borrower's Stock in American ("Stock") in the

1 amount of \$1,000.

2 The Master Loan Agreement and Security Agreement both require Borrower to hold  
3 American's collateral proceeds received for the benefit of American and pay/deliver those proceeds  
4 to American.

5 As of the filing of this case on August 3, 2017, the amount due, owing and unpaid to  
6 American under the loan was \$334,059.30. This sum consists of principal of \$298,832.06, accrued  
7 and unpaid interest of \$2,824.81, legal fees of \$27,642.43, and a restructure fee of \$4,750.00.  
8 Interest, attorney fees and other costs are continuing to accrue thereof in accordance with the loan  
9 documents. At the time of the filing of this case, the loan of Borrower with American was in default.

10 On or about December 16, 2017, Debtor confirmed its Chapter 12 Plan. Doc. Nos. 136, 137.  
11 Under the terms of the confirmed plan, American is listed as a Class 6 Claim, with a secured debt  
12 modified in the plan and American was to be paid under the plan first an interest only payment,  
13 which was due on October 1, 2018, and thereafter was to be paid annual payments of principal and  
14 interest. Id. The first payment due American under the plan was on October 1, 2018 and was not  
15 made by Borrower and Borrower is in default of its plan.

16 American is informed and believes that the collateral is subject to liens and encumbrances in  
17 favor of Community West Bank of \$1,905,141.33 and the liens in favor of American for at least  
18 \$334,059.30. Taxes are also due on the Madera Property of \$7,667.36 and the Merced Property of  
19 \$23,125.12. See Stay Motion of Community West Bank, Doc. Nos. 169-171. Borrower failed to  
20 make its payment under the confirmed plan and the Chapter 12 Trustee filed a motion to dismiss  
21 currently scheduled for hearing on January 17, 2019. Doc. No. 163-166.

22 On or about December 4, 2018, this Court granted Community West Bank relief from the  
23 automatic stay as to the Real Properties. Doc. No. 196.

24 During November 2018, the Chapter 12 Trustee filed his motion to dismiss this case as a  
25 consequence of Debtor's breach of its plan. The hearing on the motion is currently set for  
26 January 17, 2019.

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MEMORANDUM

1 collateral including by providing notice to account debtors under applicable law and the Loan  
2 Document with notice to pay American directly and to protect its interests.

3 As part of the motion, American requests a waiver of the 14-day stay period provided by  
4 Federal Rules of Bankruptcy Procedure.

5 American requests this Court grant the motion in its entirety.

6 Dated: December 17, 2018.

BOUTIN JONES INC.  
Attorneys at Law

8 By: /s/ Thomas G. Mouzes  
9 THOMAS G. MOUZES

10 Attorneys for Creditor  
11 AMERICAN AGCREDIT, PCA  
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